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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 253

MEMPHIS STEAM LAUNDRY CLEANER, INC.,
Appellant,

vs.

A. H. STONE, CHAIRMAN, STATE TAX COMMISSION OF THE STATE OF MISSISSIPPI,
Appellee

BRIEF OF APPELLANT

C. E. CLIFTON,
Memphis, Tennessee;
W. H. WATKINS, SR.,
P. H. EAGER, JR.,
THOMAS H. WATKINS,
Jackson, Mississippi.

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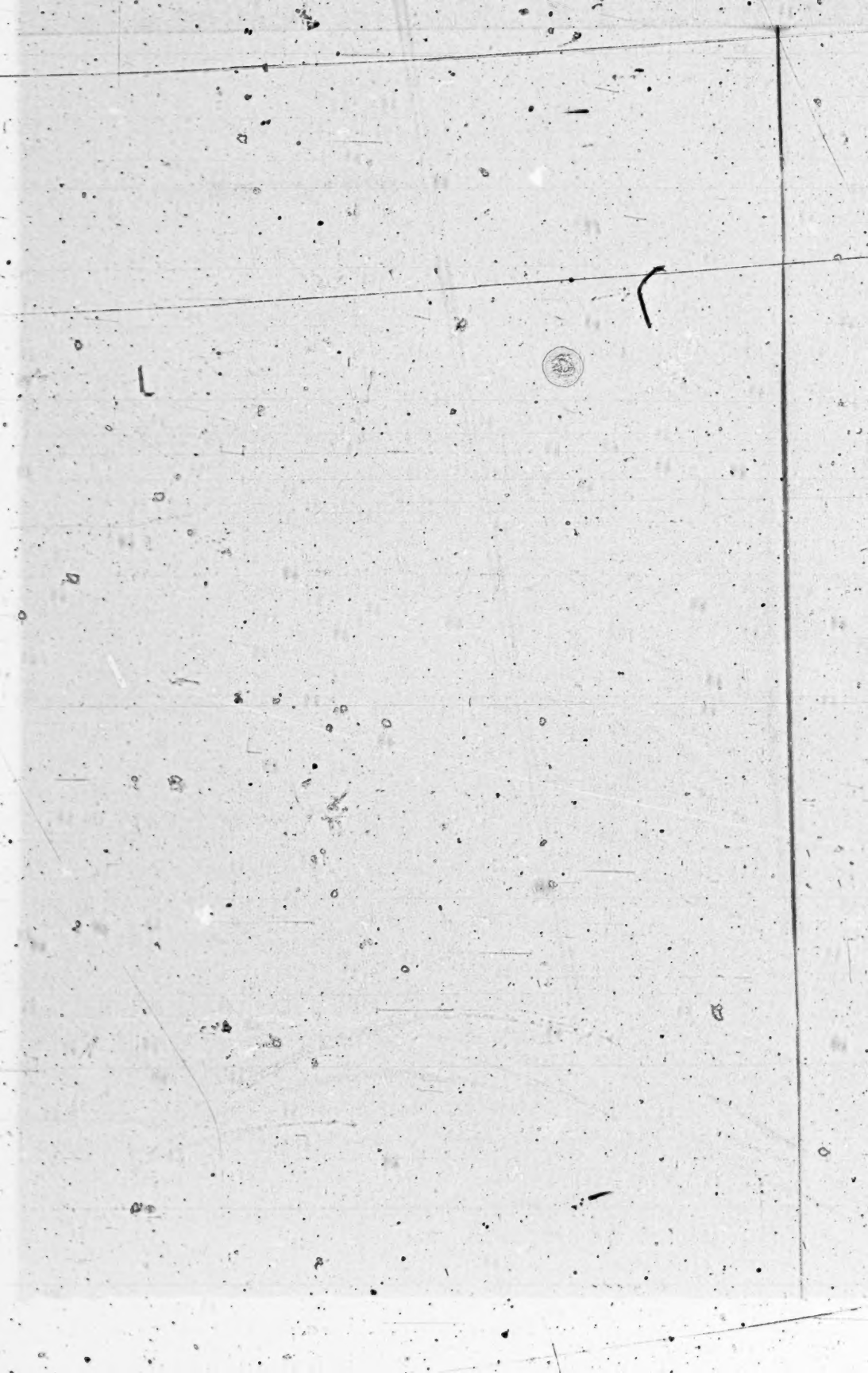

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BRIEF OF THE APPELLANT

Statement of Grounds of Jurisdiction

This is an appeal from a judgment of the Supreme Court of the state of Mississippi reported, Stone, Chairman, State Tax Commission *vs.* Memphis Steam Laundry Cleaner, Inc., 53 So. (2d) 89.

The jurisdiction of this Court to review the decision of the Supreme Court of Mississippi by direct appeal is conferred by Title 28 U. S. C. A., Section 1257(a).

Against the contention of the appellant that paragraphs (t) and (y), Section 45, Chapter 138, Mississippi Laws of 1944 violated Article I, paragraph 3, Section 8 of the Constitution of the United States providing that Congress shall

have the power to regulate commerce among the several states and against the contention that said paragraphs of Section 45, Chapter 138, Mississippi Laws of 1944 violated Section 1 of the Fourteenth Amendment to the Constitution of the United States providing that no state shall deprive any person of life, liberty, and property without due process of law, nor deny to any person within its jurisdiction the actual protection of the law.

The Supreme Court of the state of Mississippi held that the Sections challenged were valid and did not violate either the commerce clause or the Fourteenth Amendment to the Constitution of the United States in the particulars mentioned.

Statement of the Case

The facts in the case appear without conflict from the pleadings. Upon the 9th day of March, 1950, the Memphis Steam Laundry Cleaner, Inc., appellant, exhibited its declaration in the Circuit Court, First Judicial District, Hinds County, Mississippi (R. 1-4). In its declaration the appellant alleged that it was a foreign corporation organized under the laws of the state of Delaware and engaged in operating a steam laundry and cleaner in Memphis in the state of Tennessee. Having received applications from persons in the state of Mississippi for its service, in response to such applications it sent its trucks into the state of Mississippi soliciting laundry and cleaning service to be transmitted to Memphis in the State of Tennessee. It at no time had an office, place of business, agent, employee or officer in the state of Mississippi. That it solicits and renders service to the people of Mississippi in ten counties immediately joining the City of Memphis, in response to solicitations from persons in Mississippi, by sending trucks through municipalities situated in said counties. The drivers of said trucks have no authority other than to solicit

laundry for transportation from the persons desiring appellants service to be transported to appellants plant in Memphis, Tennessee, and such commodities as are in response to the solicitations of the truck drivers are delivered to them and are brought to Memphis, Tennessee, serviced and returned to the owners thereof in the state of Mississippi, whereupon the truck driver collects a reasonable charge made by the appellant for such service upon the delivery of the commodity in the state of Mississippi. No part of the service is rendered in the state of Mississippi, all of which is had in Memphis in the state of Tennessee.

The appellant had sent ten trucks into the state of Mississippi for the purposes aforesaid, whereupon the appellee, Chairman of the State Tax Commission demanded of appellant the sum of $50.00 per annum from the driver of each truck soliciting laundry to be transported as aforesaid. That the appellee threatened to attach the property of the appellant and have its truck drivers arrested and criminally prosecuted unless the tax should be paid (R. 2-3). That said tax was demanded under paragraphs (t) and (w) Section 45, Chapter 138, Mississippi Laws of 1944 which levied a tax upon a person soliciting business for a laundry not licensed in the State, said subdivision (t) being in the following language:

> "Upon each person soliciting business for a laundry not licensed in this state as such, in each county $50.00."

In Paragraph (y), Section 45, the following provision is contained:

> "Provided however, that where any person subject to the payment of the tax imposed in this section, makes use of more than one vehicle in carrying on such business, the tax herein imposed shall be paid on each vehicle used in carrying on such business."

A copy of Section 45, Mississippi Laws of 1944 is hereto attached and made Appendix (1) to this statement. That by reason thereof, since the appellant sent ten trucks in the counties in the State of Mississippi contiguous to Memphis, Tennessee, a tax of $50.00 on each truck or $500.00 per annum was demanded. The appellant alleged that it was not liable for such tax, first because its activities were in interstate commerce and not subject to local taxation. Second, it alleged that it was not liable because Chapter 137, Section 110, Mississippi Laws of 1944, imposed a tax of only eight dollars ($8.00) upon each truck rendering the same service for laundry located in the State of Mississippi. said Section 110, containing the following language:

"Upon each person operating a laundry other than a hand laundry, as follows:

In municipalities of class 1	$120.00
In municipalities of class 2	80.00
In municipalities of classes 3 and 4	60.00
In municipalities of classes 5, 6, 7, and elsewhere in the county	32.00
Upon each truck or other vehicle for such laundry in a municipality other than where the laundry is located	8.00"

A copy of said Chapter 137, Section 110, Mississippi Laws of 1944 is made Appendix "3" to this statement. The appellant alleged and averred that subdivisions (t) and (y), Section 45, Mississippi Laws of 1944 create a discrimination between intrastate and interstate commerce and therefore said Sections (t) and (y) are void and unenforceable and the tax was not collected.

Third, the appellant alleged and averred that on account of such discrimination as between laundry located out of the State of Mississippi and domestic laundry (Sections (t) and (y) of the Section 45 of the Mississippi Laws of 1944

violate the Fourteenth Amendment to the Constitution of the United States in that by reason of such discrimination deprived the appellant of its property without process of law and denied to it equal protection (R. 2, 3, 4 and 5).

The appellant alleged that while it was not liable to the State of Mississippi for taxes by reason of the interstate nature of its transactions, the appellant paid to the proper taxing authorities required of a domestic corporation under Section 110, Chapter 137, Mississippi Laws of 1944 the sum of eight dollars ($8.00) on each truck (R. 3-5). The declaration alleged that the plaintiff paid the tax of five hundred dollars ($500.00), fifty dollars ($50.00) on each of ten trucks in order to prevent the arrest of its agents and servants coming in the State of Mississippi for interstate purposes and the seizure of its trucks. Judgment was prayed for in the sum of five hundred dollars ($500.00). The appellee filed an answer to the appellants declaration (R. 4-5-6-10). There was no denial on the part of appellee of any facts alleged in the plaintiffs' declaration. The case was tried before the Circuit Judge upon the undenied facts contained in appellants declaration with the result that upon the 20th day of June, 1950 judgment was rendered in favor of the appellant against the appellee for the sum demanded. The trial court held that the appellants activities were interstate in character and rendered a judgment in appellants favor for the sum of five hundred dollars ($500.00) (R. 8-11). The appellee prosecuted an appeal to the Supreme Court of Mississippi and upon the 11th day of June, 1951 the Supreme Court of Mississippi reversed the decision of the trial court, held that the activities of the appellant were not in interstate commerce, were local in nature, were free from discrimination, reversed the judgment of the lower court and entered a final judgment dismissing appellants declaration. The Court in doing so

assumed as true the facts alleged in appellant's declaration as stated herein (R. 17). This appeal is from the judgment of the Supreme Court of Mississippi reversing the judgment of the trial court.

The Supreme Court of the State of Mississippi overruled suggestion of error July 9, 1951 (R. 17). The appellant filed petition for appeal (R. 18) which was allowed July 20, 1951 (R. 18, 19). The appellant filed an assignment of error and prayer for reversal July 20, 1951 (R. 19-20). The appellant, in accordance with the rules of the Court, filed Statement of Jurisdiction, reference to which is now made. Citation issued and was served (R. 21). The appellant filed the Statement required by Rule 12 of this Court (R. 21). This court noted probable jurisdiction in the case on October 8, 1951, whereupon the appellant filed Statement of Points to be Relied upon (R. 22-23).

Specifications of Errors Assigned

1. Paragraph (t) and (y), Section 45, Mississippi Laws of 1944, as construed by the Supreme Court of Mississippi in this case violate paragraph 3, Section 8 of the Constitution of the United States which provides that Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian Tribes. In that the appellant was required to pay a privilege tax of $50.00 upon each truck as a condition precedent to engaging in interstate commerce between Memphis, Tennessee and points in the state of Mississippi.

2. Paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944, violate paragraph 3 Section 8 constitution of the United States providing that Congress shall have power to regulate interstate commerce in that the sections of said Act create discrimination between intrastate and interstate commerce by reason of the fact that a

person transacting such activity entirely within the State of Mississippi under Section 110, Chapter 137, Mississippi Laws of 1944 would pay only $8.00 on each truck and that appellant was required to pay $50.00 per truck in carrying on the same occupation.

3. Paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944, violate Section 1 of the Fourteenth Amendment to the Constitution of the United States providing that no state shall deprive any person of life, liberty, and property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law; for that a person carrying on the same activity within the State of Mississippi as appellant does in interstate Commerce, was required to pay only a tax of $8.00 per truck whereas the appellant was required to pay a tax of $50.00 upon each truck while engaged in same occupation.

The foregoing questions were specifically raised and directed to the attention of the Court in the appellants declaration, pages, 2, 3, and 4.

The opinion of the Supreme Court of Mississippi expressly recognized that the appellant challenged the constitutionality of Paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944 as being violative of the interstate commerce clause of the Constitution of the United States and that the appellant challenged said subdivisions of Section 45 Mississippi Laws of 1944 as creating a discrimination in favor of intrastate commerce as against interstate commerce, thereby violating interstate commerce clause of the Constitution of the United States as well as the 14th Amendment of the Constitution of the United States in the particulars mentioned and the decisions of the court was in favor of the validity of the Mississippi statutes, thus challenged and an express denial of the appellant's contentions.

The question is, therefore, squarely presented as to whether or not the activities of the appellant in the State of Mississippi constituted interstate commerce and as to whether or not paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944, and Section 45, Chapter 137, Mississippi Laws of 1944, discriminate against interstate commerce and violate the Fourteenth Amendment to the Constitution of the United States. The court held that the appellant was liable for the tax provided under Paragraphs (t) and (y) of the act and dismissed the appellant's suit to recover the tax, which it would otherwise have been entitled to recover if the appellant's contentions in respect to the unconstitutionality of the acts involved are correct.

ARGUMENT

POINT I

Paragraphs (t) and (y) Section 45 Mississippi Laws of 1944, as Construed by the Supreme Court of Mississippi in This Case Violate the Commerce Clause of the Constitution of the United States.

The facts in this case have been succinctly stated and mere reference thereto should be sufficient.

The appellant operated a laundry and cleaner in the State of Tennessee, having invitations from persons residing in counties in the State of Mississippi for its service, sent its trucks in charge of employees into ten counties in the State of Mississippi; such employees having no other authority than that of soliciting, picking up commodities to be laundered or cleaned, transporting the same from counties in Mississippi to Memphis in the State of Tennessee, where the same are serviced, and returned to the communities where gathered, a reasonable compensation fixed by the appellant collected at the time of delivery and paid to the appellant in

the City of Memphis. No part of the service is performed in Mississippi.

The act of the Legislature of the State of Mississippi in this case complained of imposes a tax of Fifty Dollars ($50) annually upon each truck engaged in such service.

The license is a privilege tax for revenue purposes only, and is imposed as a condition precedent to the appellant rendering the service described.

The appellant has no officers, or agent, place of business, servant or employee in the State of Mississippi. Its sole relationship to the people in Mississippi for which it is sought to be taxed is that of soliciting, taking up and transporting to Memphis commodities to be serviced and returning the same to the State of Mississippi and the collection of a reasonable price therefor when delivered. That such business is interstate commerce could not be seriously denied.

Interstate commerce is a most comprehensive term. Commerce among the states consists of intercourse and traffic among their citizens, in all its branches, and includes the transportation of persons and property and the navigation of public waters for that purpose, as well as the purchase, sale and exchange of commodities.

Gloucester Ferry Co. v. *Pennsylvania*, 114 U. S. 196, 1 Inters. Com. Rep. 382, 5 S. Ct. 826, 20 L. Ed. 158;
New York L. Insr. Co. v. *Deer Lodge County*, 231 U. S. 495, 34 S. Ct. 167, 58 L. Ed. 332;
Hammer v. *Dagenhart*, 247 U. S. 251, 38 S. Ct. 529, 3 A. L. R. 649, 62 L. Ed. 1101.

Commerce among the several states comprehends traffic, intercourse, trade, navigation, communication, the transit of persons, and the transmission of messages by telegraph and every species of commercial intercourse but not that

commerce completely internal, which is carried on between man and man, in a state, or between different parts of the same state, and which does not extend to or affect other states.

Commerce Commission v. *Brimson*, 154 U. S. 447, 14 S. Ct. 1125, 38 L. Ed. 1047.

Commerce is not traffic alone, it is intercourse; it describes the commercial intercourse between nations and parts of nations in all its branches, and is regulated by prescribing rules for carrying on that intercourse.

Blumenstock Bros. Adv. Agency v. *Curtis Publishing Co.*, 252 U. S. 436, 40 S. Ct. 385, 64 L. Ed. 649; *Gibbons* v. *Ogden*, 9 Wheat. 1, 6 L. Ed. 23.

Commerce is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its terms, including that transportation, purchase, sale and exchange of commodities between the citizens of our country and the citizens or subjects of other countries, and between the citizens of different states.

Welton v. *Missouri*, 91 U. S. 275, 23 L. Ed. 347.

The term "commerce" in the constitutional provision giving Congress power to regulate commerce among the several states comprehends more than the mere exchange of goods; it embraces commercial intercourse in all its branches, including transportation of passengers and property by common carriers, whether carried on by water or by land.

Mondou v. *New York, H. H. & H. R. Co.*, 223 U. S. 1, 32 S. Ct. 169, 56 L. Ed. 327.

Interstate commerce is not confined to transportation but comprehends all commercial intercourse between different

states and all component parts of such intercourse, including the buying and selling of commodities for shipment from one state to another.

Federal Trade Commission v. *Pacific States Paper Trade Assoc.*, 273 U. S. 52, 47 S. Ct. 255, 71 L. Ed. 534.

Interstate commerce comprehends all the component parts of commercial intercourse between different states.

Furst v. *Brewster*, 282 U. S. 493, 51 S. Ct. 295, 75 L. Ed. 478.

Trading in news carried on among the states is interstate commerce.

Associated Press v. *U. S.*, 326 U. S. 1, 89 L. Ed. 2013.

Regulating the business of the publishers of newspapers having interstate circulation is interstate commerce and within the power of Congress to regulate.

Oklahoma Publishing Co. v. *Walling*, 327 U. S. 186, 90 L. Ed. 614, 166 A. L. R. 531.

Interstate commerce includes broadcasting over the radio, as well as television.

National Broadcasting Company v. *U. S.*, 319 U. S. 190, 87 L. Ed. 1344;
New Mexico College v. *Alberque*, 10th Cir. 158 Fed. Supp. 900;
Bamberger Broadcasting Company v. *Oloff*, 44 Fed. Supp. 904;
Tampa Times Company v. *Bernett*, 45 Fed. Supp. 166.

The following authorities establish that the tax which the appellant was required to pay was a direct burden upon

interstate commerce and a discrimination between interstate and domestic commerce.

In the case of *Spector Motor Service Inc.*, v. *O'Connor*, 340 U. S. 602, 95 L. Ed. 573, the appellant was engaged in interstate transportation through the state of Connecticut. It was authorized so to do by the Interstate Commerce Commission and the Connecticut Utilities Commission. It had filed a certified copy of its Charter with the Secretary of State of the State of Connecticut, appointed an agent for service of process. It did no intrastate business in Connecticut. It would transport interstate shipment into Connecticut, pick up property in Connecticut for interstate shipment. The Supreme Court of Connecticut held that it was subject to the same franchise of being engaged in intrastate commerce. The Supreme Court of the United States held otherwise, reversed the judgment of the Supreme Court of Connecticut, using the following language:

> "Taxing power inherent in sovereign states, yet the states of the United States have divided their taxing power between the Federal Government and themselves. They delegated to the United States the exclusive power to tax the privilege to engage in interstate commerce, when they gave Congress the power 'to regulate Commerce with foreign Nations and among the several states' . . . U. S. Const. Art. one, Sec. 8, Cl. 3. While the reach of the reserved taxing power of a state is great, the constitutional separation of the federal and state powers makes it essential that no state be permitted to exercise without authority from Congress those functions which it has delegated exclusively to Congress * * *."
>
> "This Court heretofore has struck down, under the commerce cause, state taxes upon the privilege of carrying on a business that was exclusively interstate in character. The constitutional infirmity of such a tax persists no matter how fairly it is apportioned to business done within the State. Alpha Portland Ce-

ment Co. v. Mass., 268 U. S. 203, 69 L. Ed. 916, 45 S. Ct. 477, 44 A. L. R. 1219 (measured by percentages of 'corporate excess' and net income); Ozark Pipe Line Corp. v. Monier, 266 U. S. 555, 69 L. Ed. 439 St. Ct. 184 (measured by percentage of capital stock and surplus)."

The dissenting opinion of Chief Justice Vincent in the case of *Breard* v. *City of Alexandria*, 431 U. S. 62, 95 L. Ed. 1238 is illustrative.

In the case of *Dean Milk Company* v. *City of Madison*, 340 U. S. 349, 95 L. Ed. 329, the City of Madison, Indiana passed an ordinance prohibiting the importation of milk unless processed at a plant within a radius of five miles from the City. The court held that the ordinance was a violation of the interstate commerce clause, using the following language:

> "To permit Madison to adopt a regulation not essential for the protection of local health interests and placing a discriminatory burden on interstate commerce would invite a multiplication of preferential trade areas destructive of the very purpose of the Commer Clause. Under the circumstances here presented, the regulation must yield to the principle that 'one state in its dealings with another may not place itself in a position of economic isolation'. Baldwin v. G. A. F. Seelig Inc., Supra (294 U. S. at 527, 79 L. Ed. 1040, 55 S. Ct. 497, 101 A. L. R. 55).
>
> For these reasons we conclude that the judgment below sustaining the five-mile provision as to pasteurization must be reversed."

To the same effect see *Hood* v. *Dumond*, 336 U. S. 525, 93 L. Ed. 865.

The case of *Freeman* v. *Hewit*, 329 U. S. 249, 91 L. Ed. 265 is directly in point. In that case the trustee of an estate, domiciled in Indiana, instructed an Indiana broker to ar-

ge for the sale of certain securities forming part of the
ate, at a certain price. The broker from Indiana, through
v York correspondence affected the sale in the New York
k exchange. When a purchaser was found, the Indiana
ker was notified, who in turn, informed the trustee and
latter delivered the securities to the broker for mailing
New York. Upon being delivered in New York to the
rchaser, the purchase price was paid and transmitted to
Indiana broker. The same, less commission, was turned
r to the trustee. The court held that the tax was one
on interstate commerce. The court used the following
guage:

"Of course a State is not required to give active advantage to interstate trade. But, it cannot aim to control that trade even though it desires to control its own. It cannot justify what amounts to a levy upon the very process of commerce across state lines by pointing to a similar hobble on its local trade. It is true that the existence of a tax on its local commerce detracts from the deterrent effect of a tax on interstate commerce to the extent that it removes the temptation to sell the goods locally. But the fact of such a tax, in any event, puts impediments upon the currents of commerce across the State line, while the aim of the commerce clause was precisely to prevent states from exacting toll from those engaged in National commerce".

In the case of *Lazarus Joseph v. John T. Clark & Son*, 330 S. 422 91 L. Ed. 993, the court held:

"The commerce clause precludes the leveling of a tax under state authority upon the gross receipts of stevedoring companies from loading and unloading vessels employed in interstate or foreign commerce, or upon the privilege of conducting such business measured by those gross receipts. (*Puget Sound Stevedoring Co. v. Tax Commission*, 302 U. S. 90, 82 L. Ed. 68, 58 S. Ct. 72, reaffirmed)".

In the case of *Nippert* v. *City of Richmond*, 327 U. S. 416, 90 L. ed. 760, an ordinance of the City of Richmond laid a tax upon persons soliciting orders for merchandise to be shipped from out of the state. No separate tax was laid in respect to intrastate business. The Supreme Court of the United States held that the tax was illegal, using the following language:

> "The tax here in question inherently involved too many probabilities, and we think actualities for exclusion of or discrimination against interstate commerce, in favor of local competing business, to be sustained in any application similar to the present one. Whether or not it was so intended, those are its necessary effects. Indeed, in view of that fact, and others of common knowledge, we cannot be unmindful, as our predecessors were not when they struck down the drummer taxes, that these ordinances lend themselves peculiarly to creating those very consequences or that in fact this is often if not always the object of the local commercial influences which induce their adoption. Provincial interests and local political power are at their maximum weight in bringing about acceptance of this type of legislation. With the forces behind it, this is the very kind of barrier the commerce clause was put in the fundamental law to guard against . . . ."

The case of *Best & Co.* v. *Maxwell*, 311 U. S. 454, 85 L. ed. 275 is directly in point. In that case, the appellant, a New York retail merchant displayed samples in a hotel room in North Carolina, taking orders for goods corresponding to the samples to be filled by shipping direct to the customer from New York City. The appellant was obliged to pay a tax of $250.00 levied on every person or corporation not a retail merchant in the state displaying samples in any hotel room rented or occupied temporarily for the purpose of securing retail orders. The appellant was not a

regular retail merchant and paid the tax under protest and sued to recover same asserting that the act was unconstitutional. Recovery was held in the trial court which the Supreme Court of North Carolina reversed. In reversing the judgment of the Supreme Court of North Carolina, the Supreme Court of the United States used the following language:

> "The only corresponding fixed-sum license tax to which appellant's real competitors are subject is a tax of $1 per annum for the privilege of doing business. Nonresidents wishing to display their wares must either establish themselves as regular North Carolina retail merchants at prohibitive expense, or else pay this $250 tax that bears no relations to actual, probable sales but must be paid in advance no matter how small the sales turn out to be. Interstate commerce can hardly survive in so hostile an atmosphere. A $250 investment in advance, required of out of state retailers but not of their real local competitors, can operate only to discourage and hinder the appearance of interstate commerce in the North Carolina retail market. Extra-state merchants would be compelled to turn over their North Carolina trade to regular local merchants selling by sample. North Carolina regular retail merchants would benefit, but to the same extent the commerce of the Nation would suffer discrimination.
>
> "The freedom of commerce which allows the merchants of each state a regional or national market for their goods is not to be fettered by legislation, the actual effect of which is to discriminate in favor of intrastate businessgs, whatever may be the ostensible reach of the language.
>
> "Judgment reversed."

In the case of *Cooney* v. *Telephone and Telegraph Company*, 294 U. S. 384, 79 L. ed. 934, the court held:

> "The fact that a portion of a business is intrastate and taxable does not justify a tax upon the interstate

business or upon the whole business without discrimination."

In the case of *Real Silk Hosiery Mills* v. *City of Portland*, 268 U. S. 325, 69 L. ed. 982, the court held unconstitutional as violative of the interstate commerce clause of the Constitution of the United States a state statute of the state of Oregon requiring persons soliciting orders for goods for paid delivery and receiving payment or any deposit of money in advance to secure a license and give bond condition for final delivery of goods ordered. The statute cannot be justified although there was an express purpose to prevent possible fraud.

In the case of *Davis* v. *Virginia*, 236 U. S. 697, 59 L. ed. 795, the appellant solicited orders on blanks furnished by his employer for the taking of portraits, sending them out of the state, and redelivering the same in an appropriate frame. The contract therefor was signed in the state, sale made in the state, but the service contracted for was performed entirely out of the state. The Supreme Court of the United States held that the contract was interstate commerce and not subject to taxation, using the following language:

> "The court below thought that the purchase of the frames was to be regarded as a separate transaction occurring wholly in Virginia. Whether or not this was its technical aspect as an executed contract, it often has been pointed out that commerce among the states is a practical, not a technical, conception. The preliminary contract bound the company to furnish a chance to take a frame with the portrait. Obviously it was contemplated that the frame would be sent from New York as well as the pictures, as in practice they were, and although the bargain was not complete until the company's offer was accepted in Virginia the furnishing of the opportunity was a part of the interstate transaction; from the point of view of commerce the

business was one affair. Dozier v. Alabama, 218 U. S. 124, 54 L. ed. 965; 28 L.R.A. (N.S.) 264, 30 S. Ct. Rep. 649. Crenshaw v. Arkansas, 227 U. S. 387, 57 L. ed. 565, 32 S. Ct. Rep. 294; Browning v. Waycross, 233 U. S. 16, 21, 58 L. ed. 828, 34 Sup. Ct. Rep. 578."

"Judgment reversed."

In the case of *Crenshaw* v. *State of Arkansas*, 227 U. S. 389, 57 L. ed. 565, the appellants, Crenshaw and Galloway were convicted under statutes of the State of Arkansas which imposed a tax of $200 for selling or peddling samples for ranges, and took orders therefor. Crenshaw acted as delivery man, delivered ranges to persons who had previously given orders. The appellants were convicted for not having purchased a license and were held by the Supreme Court of the State of Arkansas to be peddlers. The Supreme Court of the United States in reviewing the case cited with approval *Robbins* v. *Taxing District*, 30 L. ed. 694, 120 U. S. 489; *Brennon* v. *Titusville*, 153 U. S. 289, 38 L. ed. 719; *Caldwell* v. *North Carolina*, 187 U. S. 22, 47 L. ed. 336; *Rearick* v. *Pa.*, 203 U. S. 507, 51 L. ed. 295; *Dozier* v. *Alabama*, 218 U. S. 124, 54 L. ed. 965.

The language used by the Supreme Court of the United States is applicable here because the Supreme Court of Mississippi held that the business of the appellant in coming into Mississippi and soliciting laundry to be taken out of the state for servicing was peddling.

The Court used the following language:

"In the Emert case, therefore, there was no movement of goods in interstate commerce because of orders taken for their sale, but the specific articles carried about by the peddler and none other were sold and delivered by him. In the majority opinion of the Supreme Court of Arkansas the definition of hawkers and peddlers, as understood at common law, was recognized—as one who goes from house to house or place

to place, carrying his merchandise with him, which he concurrently sells and delivers (2 Bouvier's Law Dict. 642) but it was said that the Legislature of Arkansas might define the word 'peddler' so as to include such as traveled from place to place and took orders for goods from other states, and that such persons, because of the statute declaring them so, were peddlers, and liable to be taxed under the lawful exercise of the police power of the state. We must look, however, to the substance of things, not the names by which they are labeled, particularly in dealing with rights created and conserved by the Federal Constitution in the decisions of this court. At common law and under the statutes which have been sustained concerning peddlers, they are such as travel from place to place, selling the goods carried about with them; not such as to take orders for the delivery of goods to be shipped in the course of commerce. Here, as the facts show, the sample ranges carried about from place to place were not sold. Orders are taken and transmitted to the manufacturer in another state for ranges to be delivered in fulfillment of such orders, which are in fact shipped in interstate commerce and delivered to the persons who ordered them. Business of this character, as well settled by the decisions of this Court, constitutes interstate commerce, and the privilege of doing it cannot be taxed by the state". . . .

In the case of *Galveston Railroad Company* v. *State of Texas*, 210 U. S. 217, 52 L. ed. 1031 there was imposed a gross income tax of one per cent upon the railroad whose line lay wholly within the state. As to a railroad company engaged in interstate commerce the court held that the tax was violative of the commerce clause of the Constitution of the United States, using the following language:

"The state cannot impose the tax levied by Texas Act of April 17, 1905, upon railway companies whose lines lie wholly within the state 'equal to 1 per centum of their gross receipts' where a part, and in some cases,

much the larger part, of these gross receipts, is derived from the carriage of passengers and freight coming from or destined to, points without the state."

The lines of the railroads concerned are wholly within the state, but they connect with other lines and a part, in some instances much the larger part, of their gross receipts is derived from the carriage of passengers and freight coming from or destined to points without the state. In view of this portion of their business, the railroads contend that the case is governed by Philadelphia & S. Mail S. S. Co. v. Pennsylvania, 122 U. S. 326, 30 L. ed. 1200, 1 Inters. Com. Rep. 308, 7 Sup. Ct. Rep. 1118. The counsel for the state rely upon Main v. Grand Trunk R. Co., 142 U. S. 217, 35 L. ed. 994, 3 Inters. Com. Rep. 807, 12 Sup. Ct. Rep. 121, 163 and maintain, if necessary, that the letter overrules the earlier case. In Philadelphia & S. Mail S. S. Co. v. Pennsylvania, supra, it was decided that a tax upon the gross receipts of a steamship corporation of the state, when such receipts were derived from commerce between the states and with foreign countries was unconstitutional. We regard this decision as unshaken and as stating established law. It cites the earlier cases to the same effect."

In the case of *Caldwell* v. *State of North Carolina*, 187 U. S. 622, 47 L. ed. 336, the Supreme Court of the United States held to the same effect.

"An ordinance under which a license fee may be required for an agent of a nonresident portrait company, who requires from such company pictures and frames manufactured by it to fill orders previously obtained, and after breaking bulk and placing each picture in the frame designed for it, delivers them to the respective purchasers, is invalid as an attempt to interfere with and regulate interstate commerce."

In the case of *Dozier* v. *State of Alabama*, 218 U. S. 124, 54 L. ed. 965 a solicitor for a nonresident crayon company

solicited the taking of photographs to be sent to another state for reframing and returning for a cash consideration. The solicitor was convicted under the state law and on appeal to the Supreme Court of the United States the judgment was reversed, the court holding that the transaction was interstate commerce, using the following language:

> "We are of the opinion that the sale of the frames cannot be so separated from the rest of the dealing between the Chicago Company and the Alabama purchaser as to sustain the license tax upon it. Under the decisions, the statute, as applied to this case, is a regulation of commerce among the states, and void under the Constitution of the United States, Art. I, Section 8; Robbins v. Taxing Dist., 120 U. S. 489, 30 L. ed. 794, 1 Inters. Com. Rep. 45, 7 S. Ct. Rep. 592; Caldwell v. North Carolina, 187 U. S. 622, 47 L. ed. 326, 23 S. Ct. Rep. 229; Rearick v. Pa., 203 U. S. 507, 51 L. ed. 295, 27 S. Ct. Rep. 159."

In the case of *Crutcher* v. *Kentucky* (1891), 141 U. S. 47, 35 L. ed. — the court used the following language:

> "We have repeatedly decided that a state law is unconstitutional and void which requires a party to take out license for carrying on interstate commerce no matter how specious the pretext may be for imposing it."

In the case of *Welton* v. *State of Mo.* (1875), 91 U. S. 275, 23 L. ed. 347, the Supreme Court held that a state was without authority to provide a license fee for the solicitation of merchandise to be shipped from without a state.

> "The power of the state to exact a license tax of any amount being admitted, no authority would remain in the United States or in this court to control its action however unreasonable or oppressive. Imposts operating as an absolute exclusion of the goods would be

possible, and all the evils of discrimination State legislation, favorable to the interests of one state and injurious to the interests of other states and counties, which existed previous to the adoption of the Constitution, might follow, and the experience of the last fifteen years shows would follow, from the action of some of the States."

In the case of *Webber* v. *Virginia* (1880), 103 U. S. 344, 26 L. ed. 565, there was involved a Virginia statute requiring agents for the sale of articles manufactured in other states to obtain a license and pay a tax in each county where he might sell, or offer to sell his goods. No such license was required of agents for domestic goods. The court, in striking down the act, used the following language:

"Her there is a clear discrimination in favor of home manufacturers and against the manufacturers of other states."

The original case upon the subject is *Robbins* v. *Tax District of Shelby County* (Tenn.), 120 U. S. 489, 30 L. ed. 694. There was a tax imposed upon persons soliciting the sale of merchandise to be shipped from out of the state into the state. Appellant solicited sales of merchandise in the City of Memphis for commodities to be shipped from out of the state, was arrested and convicted, his conviction was affirmed by the Supreme Court of Tennessee and was appealed to the Supreme Court of the United States, which reversed the judgment. The court used the following language:

"It would not be difficult, however, to show that the tax authorized by the State of Tennessee in the present case is discriminative against the merchants and manufacturers of other states. They can only sell their goods in Memphis by the employment of drummers and by means of samples; whilst the merchants and manufacturers of Memphis, having regular licensed

houses of business there, have no occasion for such agents, and if they had, they are not subject to any tax therefor. They are taxed for their licensed houses, it is true; but so, it is presumable, are the merchants and manufacturers of other states in the places where they reside; and the tax on drummers operates greatly to their disadvantage in comparison with the merchants and manufacturers of Memphis . . . ."

"To say that the tax, if invalid as against drummers from other states, operates as a discrimination against the drummers of Tennessee, against whom it is conceded to be valid, is no argument; because the state is not bound to tax its own drummers; and if it does so whilst having no power to tax those of other states, it acts of its own free will, and is itself the author of such discrimination. As before said, the state may tax its own internal commerce, but that does not give it any right to tax interstate commerce."

"The judgment of the Supreme Court of Tennessee is reversed and the plaintiff in error must be discharged."

A very illustrative case is that of *International Textbook Co. v. Pigg*, 217 U. S. 91, 54 L. ed. 678. In that case it appeared that the International Textbook Company from Scranton, Pa., conducted a correspondence school from which it taught selected courses in literature, arithmetic, science, and other questions. It solicited the sale of its system by correspondence by solicitation through agents. It sent an agent into the State of Kansas who secured a contract from a man by the name of Pigg to take the correspondence course of the appellant. The appellee, however, refused to pay for the services. Suit was brought in the State court in Kansas against the appellee for breach of contract. Appellee pleaded that the appellant was a foreign corporation; that it had not filed a copy of its charter with the Secretary of State of the State of Kansas, and, therefore, was prohibited from maintaining any suit in the

state court. Recovery was denied in the state court of Kansas and the Supreme Court of the United States held that the appellant was engaged in interstate commerce although it sent soliciting agents into the state who had procured the contract sued for. That is to say, in sending a representative into the state to solicit the sale of its services and procuring a contract, the appellant was not engaged in a local activity but was engaged in interstate commerce.

In reversing the judgment, the Supreme Court used the following language:

> "To carry on interstate commerce is not a franchise or privilege granted by the state; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; and the accession of mere corporate facilities as a matter of convenience in carrying on their business cannot have the effect of depriving them of such right unless Congress should see fit to interpose some contrary regulation on the subject. Again, in the same case: 'would anyone pretend that a state legislature could prohibit a foreign corporation, an English or French transportation company—for instance,—from coming into its borders and landing goods and passengers at its wharves and soliciting goods and passengers for a return voyage, without first obtaining a license from some state officer, and filing a sworn statement as to the amount of its capital stock paid in? and why not? Evidently because the matter is not within the province of state legislation."

The case of *Carson* v. *Maryland*, 120 U. S. 502, 38 L. ed. 600 is directly in point. Mr. Justice Bradley, delivering the opinion of the court, used the following language:

> "The Code of Maryland, as amended in 1880, provides that 'no person or corporation other than the grower, maker or manufacturer shall barter or sell, or

otherwise dispose of, or shall offer for sale, any goods, chattels, wares, or merchandise within this state, without first obtaining a license in the manner herein prescribed'. A violation of this law was made an indictable offense; and the plaintiff in error, a citizen and resident of New York, was indicted for offering to sell and for selling by sample, in the city of Baltimore, without license, certain goods for a New York firm, to be shipped from New York, directly to the purchaser. The plaintiff in error demurred to the indictment, but it was sustained both by the court of original jurisdiction and by the Court of Appeals of Maryland on writ of error, the constitutionality of the law was duly raised, and the law was sustained. The same principles apply to this case which were considered in that of Robbins, and the same result must be declared."

In the case of *Stockard* v. *Morgan*, 185 U. S. 27, 46 L. ed. 785, the court held unconstitutional an act imposing a tax upon persons acting as agents for a nonresident firm or corporation for goods to be shipped by such nonresident principles, to purchasers in the State of Tennessee violative of the commerce clause of the Constitution of the United States.

In the case of *Stewart* v. *Michigan*, 232 U. S. 665, 58 L. ed. 787 the court used the following language:

"A state may not, consistently with the commerce clause of the Federal Constitution, impose a license tax upon a nonresident merchant traveling from place to place within the State, and soliciting orders by sample, lists, and catalogues for goods which are afterwards shipped into the state in carload lots to his order, and which he delivers from the cars to the persons ordering them."

The statute complained of involves no question of ad valorem tax. *Pittsburg & Southern Coal Company* v. *Bates*, 156 U. S. 577, 39 L. ed. 538.

The language used by the Court in *Spector Motor Service, Inc.*, v. *O'Connor, supra*, is entirely applicable; the court used the following language:

> "The objection to its validity does not rest on a claim that it places an unduly heavy burden on interstate commerce in return for protection given by the State. The tax is not levied as compensation for the use of highways or collected in lieu of an ad valorem property tax. Those bases of taxation have been disclaimed by the highest court of the taxing state. It is not a fee for an inspection or a tax on sales or use. It is a 'tax or excise' placed unequivocally upon the corporation's franchise for the privilege of carrying on exclusively interstate transportation in the State."

The Supreme Court of Mississippi did not hold that the tax was a lien tax and that a nonresident laundry would not be subject to an ad valorem tax if it owned property within the state. The mere fact, however, that the appellant owned no property located in the State of Mississippi and, therefore, paid no ad valorem tax could not justify the imposition of a discriminatory privilege tax for the transaction of interstate commerce.

Under Section 9744, 1942 Code, all property, whether real or personal in the State of Mississippi, upon the 1st day of January of each year is subject to ad valorem taxes. A copy thereof is made Appendix 4 to this brief.

There is nothing in the statute involved exempting the appellant from liability for such ad valorem taxes as it owned no property within the state upon the first day of January of any year. We desire to lay emphasis upon the discrimination; a truck serving a domestic laundry would be subject only to an $8.00 per annum tax in each county, which the appellant has paid, while upon the other hand, the appellant soliciting for its laundry situated out of the state is required to pay $50.00 upon each truck.

Cleveland, Cinn., Chicago & St. Louis Railway Co. v. *Baccus*, 154 U. S. 439, 38 L. ed. 1011.
Panhandle Pipeline Co. v. *Michigan Public Service Commission*, 341 U. S. 329, 95 L. ed. 993.
Bread v. *City of Alexandria*, 95 L. ed. 1233.
Gibbons v. *Ogden*, 9 Wheat. 1, 6 L. ed. 23.

Mississippi is profiting very greatly by reason of the advantages of trade afforded under the interstate commerce clause of the Constitution of the United States. The most extensive sea-food industry in the world is maintained on the Mississippi coast solely and exclusively by virtue of the protection of the interstate commerce clause of the Constitution of the United States under the interpretation of the Supreme Court of the United States. *Foster Fountain Packing Co.* v. *Haydel*, 278 U. S. 1, 73 L. ed. 149, 49 S. Ct. 1. Farmers in southern Mississippi furnish the city of New Orleans, Louisiana, as well as the city of Memphis, Tenn., with milk. During the present year an effort was made by the farmers in the State of Louisiana to prohibit the shipment of milk from the state of Mississippi into Louisiana. The officials of the State of Mississippi properly availed themselves of the rights of farmers in Mississippi under the commerce clause of the Constitution of the United States. They invoked successfully the case of *Hood* v. *Dumond*, 336 U. S. 525, 93 L. ed. 865, and a more recent case of *Dean Milk Co.* v. *Madison*, *supra*.

The furnaces in the steel mills of Birmingham, Alabama are heated by gas piped in interstate commerce from gas fields in Mississippi to the City of Birmingham, a right protected under the commerce clause of the Constitution of the United States as construed by the Supreme Court of the United States, *Pa.* v. *West Va.*, 262 U. S. 553, 67 L. ed. 1117, 32 A.L.R. 300.

The court completely overlooked the vital distinction in this case that the mere soliciting of laundry to be taken out of the state for service was not a local activity but interstate commerce and upon such distinction this case turns.

We call attention to the fact that in the present instance, interstate commerce is bearing its share of the burden, paying $8.00 per truck in each county, the same liability imposed upon resident citizens. It has done this regardless of liability therefor, and we call Your Honors' attention to the opinion of the Attorney General of Mississippi, in which opinion it is stated that if a nonresident laundry paid the local tax of $8.00, being the same imposed upon a resident, no greater burden could be imposed on it. See Appendix 4. The State Tax Commission followed the opinion of the Attorney General up until recently.

The state courts have uniformly held that the solicitation of laundry to be taken from one state into another is interstate commerce.

The Supreme Court of Kansas so held in the case of *Kansas City* v. *Seaman*, 160 Pac. 11.

The same was held in an appellate court in the State of New York, *People* v. *Vechion*, 276 N. Y. S. 705.

The Supreme Court of Kansas reached a same conclusion in *Comm.* v. *Pearl Laundry Co.*, 105 Kentucky 259, 49 S. W. 36.

From the foregoing it necessarily appears that the imposition of the tax was violative of the interstate commerce clause of the Constitution of the United States not only because interstate activities and commerce is not subject to taxation by the state, but because interstate commerce was discriminated against in that a citizen of the state might perform the same service for a laundry situated within the state upon payment of a tax of $8.00, that is to say, a laundry situated in the state might send trucks 200 miles, upon

the payment of $8.00 to each county, whereas the appellee was prohibited from engaging in an interstate transaction in the mere outskirts of Memphis except upon the payment of $50.00 in each county.

Point II

Subdivisions (t) and (y) Section 45, Mississippi Laws of 1944 violate the Fourteenth Amendment to the Constitution of the United States in the particulars hereinbefore mentioned.

For the reason that the operating of a domestic truck might have performed the same service within the state of Missjssippi regardless of the mileage upon the payment of a tax of $8.00 per truck for each county, whereas a tax of $50.00 per truck was demanded of appellant for each county.

It is very true that taxing statutes in dealing with the equality clause are subject to classification, but that does not mean that one tax may be imposed upon a resident, and a different tax imposed on a nonresident, for engaging in the same activity, and the authorities cited by appellant's counsel do not support this rule.

It is conceded in this case that there is demanded of the appellant a tax of $50.00 upon each truck, whereas the representative of a laundry from the most remote county in Mississippi could exercise the same privilege by paying $8.00 in each county.

Counsel cites the case of *Caskey Baking Co. v. Virginia*, 313 U. S. 117, 85 L. Ed. 1222.

In that case, a nonresident of the State of Virginia, by means of a truck transported bread into the State of Virginia and made sales of bread to persons desiring to buy the same from the truck.

The court justified a different privilege tax upon that ccupation from a wholesale merchant doing business in he state.

The court, speaking through Mr. Justice Roberts, in sustaining the Act, used the following language:

"While the transportation of bread across the State line is interstate commerce, that is not the activity which is licensed or taxed. The purely local business of peddling is what the Act hits, and this irrespective of the source of the goods sold. It is settled that such a statute imposes no burden upon interstate commerce which the Constitution interdicts. The appellant, however, urges that the Act discriminates against interstate commerce by exempting from its operation the privilege of sales by manufacturers paying tax on their capital employed in manufacture in Virginia. It is said that if its bakery were situate in Virginia the appellant would have the benefit of this exemption and since it is not, the marketing of appellant's goods shipped into the State is the target of a hostile discrimination, but the argument overlooks the fact that peddlers resident in Virginia who buy their goods within the State or buy or procure them from extra-state sources are alike subject to the Act. The contention that the Act discriminates against interstate commerce by virtue of the exemption in question is negatived by our decisions."

But no question of commerce was involved in that case. The question was one of classification as applied to intrastate commerce. Exactly the opposite is presented here.

The following authorities are directly in point.

A statute providing a higher tax for a nonresident than resident in carrying on the same business violates the 4th Amendment to the Constitution of the United States. *Frost* v. *Corporation Commission*, 278 U. S. 515, 73 L. Ed. 483; *Mayflower Farmers* v. *Tenecyck*, 297 U. S. 266, 80 L. Ed.

265; *F. S. Royster Guano* v. *Virginia*, 253 U. S. 412, 64 L. Ed. 989; *Hartford Boiler Insurance Company* v. *Howerton*, 301 U. S. 459, 81 L. Ed. 1223; *Maxwell* v. *Bugbee*, 250 U. S. 525, 63 L. Ed. 1124; *Hayes* v. *Missouri*, 120 U. S. 68, 30 L. Ed. 578.

In the case of *Bethlehem Motors Corporation* v. *George W. Flynt, et al.*, 256 U. S. 421, 65 L. Ed. 1029, the court held that a statute of the State of North Carolina violated both the 14th Amendment to the Constitution of the United States and of the Interstate Commerce Laws where statute required a tax of $3,000.00 for the sale of automobiles unless the manufacturer had three-fourths of its capital invested in the state, in which event the tax was only $500.00.

See *I. M. Darnell* v. *Memphis*, 52 L. Ed. 413, 208 U. S. 113. In the case of *Ward* v. *Maryland*, 12 Wall. 418, 20 L. Ed. 449, the court held that a state statute prohibiting the sale within a certain district of the state articles other than agricultural products and articles manufactured in the state by persons not residents of the state without first obtaining a license and paying therefor violated the Constitution. See also *Sully* v. *American National Bank*, 178 U. S. 289, 44 L. Ed. 1072. See also *Chalker* v. *Birmingham Railroad Company*, 249 U. S. 522, 63 L. Ed. 740; *Power Manufacturing Company* v. *Saunders*, 274 U. S. 490, 81 L. Ed. 1165; *Hanover Fire Insurance Company* v. *Harding*, 272 U. S. 494, 71 L. Ed. 372, 49 A. L. R. 713; *Baltic Mining Co.* v. *Mass.*, 58 L. Ed. 127, 231 U. S. 68.

We call the Court's attention to the official opinion of the Attorney General of the State of Mississippi of August 1, 1940, advising the appellee in this case that no discrimination could be had between a resident or nonresident laundry. The Attorney General seemed to be of the opinion that a nonresident laundry should bear its proportionate

part of the burden and advised the State Tax Commission that if the nonresident laundry paid the $8.00 per truck no further tax should be required.

A copy of this opinion is hereto attached as Appendix 3.

The appellant has acquiesced in the opinion of the Attorney General of Mississippi and paid $8.00 on each truck and will continue to do so. The appellee is unwilling to abide by the opinion of the Attorney General of Mississippi.

Conclusion

We respectfully submit that Paragraphs (t) and (y), Section 45, Mississippi Laws of 1944 violate the interstate commerce clause of the Constitution of the United States as well as the first section of the Fourteenth Amendment to the Constitution of the United States, for the reasons hereinabove stated.

It is respectfully submitted that the judgment appealed from was erroneous and should be reversed.

Respectfully submitted,

C. E. Clifton,
Memphis, Tennessee;
W. H. Watkins,
Pat H. Eager, Jr.,
T. H. Watkins,
Attorneys for Appellant.

Certificate

I, W. H. Watkins, of counsel for the appellant, in the above entitled case, certify that I have this day forwarded by United States Mail, postage prepaid to J. H. Sumrall, attorney for appellee, Jackson, Mississippi, a true and correct copy of the foregoing brief.

November 6, 1951.

W. H. Watkins,
Of counsel.

APPENDIX 1

Section 45, Chapter 138, Mississippi Laws of 1944.

Upon each person doing business as a transient vendor, or dealer, as defined in this section, and upon which a privilege tax is not specifically imposed by another section of this act, a tax for each county according to the following schedules:

(a) Upon each transient vendor, or dealer of candies, peanuts, salted or roasted nuts, ice cream or ice cream products, or any other confection	$10.00
(b) Upon each transient vendor, or dealer of spectacles	$25.00
(c) Upon each transient vendor, or dealer of fish, oysters, or other sea foods (except a fisherman selling his own catch)	$10.00
(d) Upon each transient vendor, or dealer of batteries of motor vehicles	$15.00
(e) Upon each transient vendor or dealer of radios, phonographs, phonograph records, pianos or other musical instruments	$20.00
(f) Upon each transient vendor, or dealer of patent, proprietary secret or trademarked medicines, or nostrums, or ordinary household remedies, cosmetics, flavoring extracts, condiments, sauces and spices, when sold by methods other than described in (x)	$25.00
(g) Upon each transient vendor, or dealer of gasoline, kerosene, lubricating oil, or other petroleum products	$25.00

Provided that the provisions of this section shall not apply to transient vendors, or their agents, or representatives, in the sale or delivery of gasoline, oil, or similar petroleum products when drawn, conveyed and distributed from a stock maintained at a warehouse, oil depot, distribution station, or es-

tablished place of business in this state, upon which has been paid all privilege taxes required.

(h) Upon each transient vendor or dealer of coffee, tea, flavoring extracts, condiments, sauces or spices, when such transient vendor sells at wholesale to retail dealers only, for each county $25.00

(i) Upon each transient vendor, or dealer of coffee, tea, flavoring, extracts, condiments, saurces or spices, when such transient vendor sells at retail to consumers, for each county $50.00

Provided, further, that a dealer or transient vendor who sells to both consumers and retailers, shall be liable for the $50.00 tax.

(j) Upon each transient vendor, or dealer of dry goods, including ready-to-wear clothes, bed spreads, table cloths, etc., small rugs, or other small articles of furniture $25.00

(k) Upon each transient vendor, or dealer of household or kitchen utensils, brooms, pots, pans, dishes, knives, forks, spoons, or small hardware such as rakes, hoes, or hand garden tools $50.00

(l) Upon each transient vendor, or dealer of motor vehicle accessories, motor vehicle parts or motor vehicle tires $10.00

(m) Upon each transient vendor, or dealer in anthracite or bituminous coal or coke $100.00

(n) Upon each transient vendor or dealer of bread, rolls, cakes, pies or other bakery products, except those acting for a bakery duly licensed in this state, in each county $50.00

(o) Upon each transient vendor, or dealer of cigarettes, cigars, or other tobaccos $50.00

(p) Upon each transient vendor, or dealer of raw furs $50.00

(q) Upon each transient vendor or dealer in jewelry $50.00

(r) Upon each transient vendor or dealer of soda water, coca-cola, pepsi-cola, chero-cola, ginger ale, grape and other fruit juices, or imitations thereof, carbonated or other beverages, or like preparations commonly known as soft drinks, acting for a person not licensed in this state, in each county $100.00

(s) Upon each transient vendor, or dealer engaged in the business of renting or leasing towels, pillow cases, sheets, bed spreads, or other similar articles, not licensed in this state, in each county $50.00

(t) Upon each person soliciting business for a laundry not licensed in this state as such, in each county $50.00

(u) Upon each transient vendor, or dealer of a general line of goods, wares and merchandise usually carried for sale in a general mercantile store, upon each truck operated whereon general merchandise is carried, in each county $85.00

Provided that where a general line of merchandise is carried, the several taxes levied herein on specific articles or classes of merchandise shall not apply.

(v) Upon each transient vendor, or dealer of fruits, vegetables or other produce, in each county $50.00

Provided, however, that when perishable fruits and vegetables are sold from a plant, warehouse, or built-in refrigeration plant, situated in this state, assessed at not less than $3,000.00 upon which a proper tax has been, or is being, paid, the tax imposed upon a transient vendor, dealer or sales-

man of such perishable fruits and vegetables shall then be $10.00 for each county.

(w) Upon each transient vendor, or dealer of any goods, wares or merchandise not elsewhere specifically taxed in each county $20.00

(x) Upon each transient vendor, or dealer of patent, proprietary, secret, or trade-marked medicines, or nostrums by whatever name called, and whether or not such medicines are sold or disposed of in or through the store of a druggist or merchant, when sold, advertised, offered for sale, or traded by harangue, or through or by means of minstrels, exhibitions, attractions, shows, or amusements in any form, in each county $250.00

Provided that each natural person doing business as a transient vendor, or dealer traveling on foot shall pay one-fifth (1/5) of the amount set out in the above schedule.

(y) provided however, that where any person subject to the payment of the tax imposed in this section, makes use of more than one vehicle in carrying on such business, the tax herein imposed shall be paid on each vehicle used in carrying on such business.

APPENDIX 2

Section 110, Chapter 137 Mississippi Laws of 1944.
Appendix 2 to Statement of jurisdiction.
Upon each person operating laundry other than a hand laundry, as follows:

In municipalities of class 1	$120.00
In municipalities of class 2	$80.00
In municipalities of classes 3 and 4	$60.00
In municipalities of classes 5, 6, 7, and elsewhere in the county	$32.00
Upon each truck or other vehicle for such laundry in a municipality other than where the laundry is located	$8.00

APPENDIX 3

Mr. E. R. Prenshaw, Chief
License and Tobacco Tax Division
State Tax Commission
Jackson, Mississippi

DEAR SIR:

Under date of August 31st, I have your inquiry as to the amount of privilege tax levied by the privilege Tax Act of 1940 on agents of a Laundry located outside of the State of Mississippi when the agents are soliciting laundry in the State of Mississippi.

OPINION

Section 123, Privilege Tax of 1940, levies a privilege tax "Upon each person operating a laundry other than a hand laundry, as follows":

The tax then levied is graduated in amount according to the population of the municipality in which the laundry was located. Said Section then levies a tax "upon each agent for such laundry in a municipality other than where the laundry is located, $8.00."

Section 221 of said act levies a privilege tax upon each person doing business as a transient vendor or dealer. The term "transient vendor" is defined.

Paragraph (t) of said section levies a privilege tax as follows: "Upon each person soliciting business for a laundry not licensed in said state as such, in each county, $50.00".

The definition of a transient vendor or dealer as set out in said section is not broad enough to cover a person soliciting for a laundry and it is rather uncertain as to whether this tax would be valid at all.

The law is well settled that a state cannot by levying a tax, discriminate between citizens, products or businesses carried on in other states. It is true that the tax levied by Paragraph (t) is not specifically limited to an agent of a laundry located outside of the state. However, all laundries located within the state are required to pay a tax under the provisions of Section 123 and it could not apply to a laundry located in the state. Unless an out of state laundry is permitted to pay the tax levied by Section 123, and pay the tax levied on its agents by said section, it is clear that the provisions of said paragraph (t) would discriminate against the out of state laundries, and for this reason said paragraph (t) would be invalid and unconstitutional.

It further appears that the tax levied by said Section 221 is only levied on transient vendors or dealers who are not specifically taxed by another section. Said Section 123 specifically taxes the agents of laundries, whether operating within this state or without this state.

I therefore advise that where a laundry is located outside of the state and sends its agents into the state to solicit laundry, the laundry could pay the tax on laundries as is levied by Section 123 and on its agents under the provisions of said section, in which event it would not be liable for the taxes levied by Section 221 (t). If the out of state laundry does not pay the tax levied on laundries under the provisions of Section 123, then it would be liable for the tax levied on its agents by said Section 221 (t).

Biennial Report of the Attorney General 1939-41, page 92.

Sec. 9744. Taxes, a lien; from what date.—Taxes, State, county, and municipal, assessed upon lands or personal property, shall bind the same, and be entitled to preference over all judgments, executions, incumbrances, or liens, whensoever created; and all taxes assessed shall be a lien upon and bind the property assessed, from the first day of January of the year in which the assessment shall be made; and no property shall be exempt from distress and sale for taxes. And it shall not be necessary to the validity of an assessment, or of a sale of land for taxes, that it shall be assessed to its true owner; but the taxes shall be a charge on the land or personal property taxed, and the sale shall be a proceeding against the thing sold, and shall vest title in the purchaser, without regard to who may own the land or other property when assessed or when sold, or whether wrongfully assessed, either to a person, or to the State, or any county, city, town, or village, or subdivision of either. Provided, however, that the lien for municipal taxes shall be secondary and subordinate to the lien for State and county taxes.